

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 9 – Miscellaneous

Amendments of the Companies Act 1989

Section 111: Amendments of the Companies Act 1989

626. *Section 111* amends section 166 of the Companies Act 1989 (power of Secretary of State to give directions to persons specified as recognised investment exchanges or recognised clearing houses under Part 18 of FSMA).
627. *Subsections (2) and (3)* replace references to the “Authority” (i.e. the FSA) in section 166 with references to “the appropriate regulator”, which is defined in *new subsection (9)* as the FCA in the case of recognised investment exchanges and the Bank in the case of recognised clearing houses (*subsection (8)*). These amendments are consequential on the amendments to Part 18 of FSMA (see, in particular, the amendments made by *section 29*).
628. *Subsection (4)* amends subsection (3) so as to make provision for two new grounds on which a direction may be given to a recognised body under subsection (2). Such directions may require the recognised body concerned to take action or to refrain from taking action under its default rules and may only be given where the relevant regulator is satisfied that it is necessary to give the direction for the purposes of any of the grounds specified in subsection (3) following consultation with the recognised body concerned. These changes will provide additional flexibility for the relevant regulators to take action to address risks to financial stability or to help facilitate a proposed, possible, or actual exercise of a power under section 1 of the Banking Act 2009 (special resolution regime).
629. *Section 166* confers a power of direction which applies where the exchange or clearing house has taken action under its default rules (without being directed to do so under subsection (2)) or has taken action following such a direction. Subsection (7) provides for an appropriate regulator to direct that the exchange or clearing house do or refrain from doing things it has power to do under its default rules. *Subsections (5) and (6)*, respectively, make amendments to subsection (7) and insert *new subsections (7A) and (7B)*. The general effect of these amendments is to remove, in certain circumstances, the restriction that applies to the exercise of the power of direction in subsection (7) (that the direction will not adversely affect default proceedings).